

Dear Center for Medicare and Medicaid Services:

The steps the Center for Medicare and Medicaid Services (CMS) for vaccines are inadequate. CMS is considering a rule requiring long term care facilities (LTC) and intermediate care facilities for individuals with intellectual disabilities (ICF-IID) locations. The CMS proposal is not ambitious enough to protect individuals residing in congregate settings, and in light of actions of several states, a vaccine mandate should be imposed.

### 1. Transmission

The Center for Disease Control and Prevention (CDC) should declare the principal mode of transmission of the virus to be inhalation of aerosols, given the unlikelihood of droplets or contact<sup>1</sup> transmitting the virus SARS-CoV-2. As a consequence, handwashing or shared equipment does not cause the spread of the virus, but shared air does.

### 2. Mandates

CMS should amend the rule to require staff serving LTC or ICF-IID facilities to be vaccinated. Cases have occurred at a skilled nursing facility in Kentucky from an unvaccinated healthcare worker<sup>2</sup>, and this possibility should not be tolerated. In addition, several states have passed anti-vaxxer<sup>3</sup> legislation.

CMS should also note only New York and Hawaii have implemented vaccine passports while 14 states have banned vaccine passports, per US News and World Reports.<sup>4</sup> As a consequence, CMS needs to act, and should take stronger action. Once the FDA grants full approval to a COVID-19 vaccine, CMS should mandate all staff at covered facilities be vaccinated, with exemptions only as required by Federal Law<sup>5</sup>, namely for medical reasons as required by Title I of the Americans with Disabilities Act or religious reasons as required by Title VII of the Civil Rights Act of 1964.

### 3. Application to other settings

CMS should take the broad step of mandating vaccination of staff to all congregate care or similar settings where it has jurisdiction. This should include not only do origins, prisons, and homeless shelters, but psychiatric residential treatment facilities, psychiatric hospitals, forensic hospitals, adult foster care home, group homes, assisted living facilities, supervised apartments, and inpatient hospice facilities.

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<sup>1</sup> <https://twitter.com/kprather88/status/1399050183745232898?s=21>

<sup>2</sup> <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7017e2-H.pdf>

<sup>3</sup> <https://www.merriam-webster.com/dictionary/anti-vaxxer>

<sup>4</sup> <https://www.usnews.com/news/best-states/articles/which-states-have-banned-vaccine-passports>

<sup>5</sup>

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K.5>

This should also extend to staff on home and community based services who are interacting with vulnerable individuals. Whether a person is paid or unpaid should not make a difference. We need a vaccinated workforce to protect the most vulnerable and reach towards herd immunity.

#### 4. Who is staff

CMS considers under §483.80 limiting the application to staff who come in weekly. CMS should reject this, as the benefits of vaccination, including on public health, outweigh any risk. Checking vaccination records and requesting the local public health agency come to administer someone who is unvaccinated a covid vaccine should not be unduly burdensome, given the grave risk an unvaccinated person can have on vulnerable individuals.

#### 5. Education

The education requirements should be modified to exempt vaccinated staff.<sup>6</sup> If CMS chooses not to mandate the vaccine, it could use the procedure for Hepatitis B and require a written refusal.

#### 6. Full Approval

This should be contingent and implemented upon the FDA granting full licensure to a COVID-19 vaccine. This action is overdue for the safe and highly vaccines we have against the virus SARS-CoV-2.

#### 7. Preemption of State Regulations

This guidance needs to explicitly preempt state laws or executive orders which limit vaccine mandates or vaccine verification. Specific laws that have this policy include<sup>7</sup>

- Alabama Act 2021-493<sup>8</sup>
- Arkansas Code Title 20, Chapter 7, Section 142<sup>9</sup> pursuant to multiple bills<sup>10</sup>

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<sup>6</sup> Staff who have been given one dose of a vaccine and are waiting until eligible for the next dose, or are waiting for the period for immunity (assumed by the CDC to be two weeks) can be exempted.

<sup>7</sup> The Agency

<sup>8</sup> <https://arc-sos.state.al.us/ucp/L0629494.AI1.pdf>

<sup>9</sup>

<https://casetext.com/statute/arkansas-code-of-1987/title-20-public-health-and-welfare/subchapter-2-health-and-safety/chapter-7-state-board-of-health-department-of-health/subchapter-1-general-provisions/section-20-7-142-multiple-versionsprohibition-on-requirement-for-vaccine-or-immunization-for-coronavirus-2019-covid-19>

<sup>10</sup> Senate Bill 615 and House Bill 1547 both were enacted creating this new section.

- Florida Statutes 381.00316<sup>11</sup>
- Indiana Code 16-39-11-5<sup>12</sup>
- Iowa House File 889<sup>13</sup>
- Montana House Bill 702<sup>14</sup>
- North Dakota, House Bill 1465<sup>15</sup>
- Oklahoma Senate Bill 658<sup>16</sup>
- Tennessee Public Chapters 513<sup>17</sup> and 550<sup>18</sup>
- Utah Code 26-68-102<sup>19</sup>

This anti vaccination legislation, all enacted in 2021 demonstrates why CMS and the rest of the Federal Government needs to mandate COVID-19 vaccination.

Sincerely,  
Theo Allen

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<https://casetext.com/statute/florida-statutes/title-xxix-public-health/chapter-381-public-health-general-provisions/section-38100316-effective-712021-covid-19-vaccine-documentation>

<sup>12</sup>

<https://casetext.com/statute/indiana-code/title-16-health/article-39-health-records/chapter-11-immunization-records/section-16-39-11-5>

<sup>13</sup> <https://www.legis.iowa.gov/docs/publications/LGE/89/HF889.pdf>

<sup>14</sup> <https://leg.mt.gov/bills/2021/billpdf/HB0702.pdf>

<sup>15</sup> <https://www.legis.nd.gov/assembly/67-2021/documents/21-0988-08000.pdf>

<sup>16</sup> [http://webserver1.lsb.state.ok.us/cf\\_pdf/2021-22%20ENR/SB/SB658%20ENR.PDF](http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/SB/SB658%20ENR.PDF)

<sup>17</sup> <https://publications.tnsosfiles.com/acts/112/pub/pc0513.pdf>

<sup>18</sup> <https://publications.tnsosfiles.com/acts/112/pub/pc0550.pdf>

<sup>19</sup> [https://le.utah.gov/xcode/Title26/Chapter68/26-68-S102.html?v=C26-68-S102\\_2021050520210505](https://le.utah.gov/xcode/Title26/Chapter68/26-68-S102.html?v=C26-68-S102_2021050520210505)